

FCC Received September 27, 1995 @ 3:00 p.m.
Donna A. Brachman

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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

DOCKET FILE COPY ORIGINAL

WT DOCKET NO. 95-26

Commercial Realty St. Pete, Inc.,
James C. Hartley, Teresa Hartley,
and Ralph E. Howe

DATE OF HEARING: September 12, 1995 VOLUME: 2
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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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 In the matter of:)
 Commercial Realty St. Pete, Inc.) Docket No. 95-26
 James C. Hartley, Teresa Hartley,)
 and Ralph E. Howe)
 -----)

The above-entitled matter came on for hearing pursuant to Notice before Arthur I. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Tuesday, September 12, at 11:50 a.m.

APPEARANCES:

On behalf of Commercial Realty St. Pete, Inc.:

LAUREN A. COLBY, ESQUIRE
 10 East 4th Street
 Frederick, Maryland 21701

On behalf of the Wireless Telecommunications Bureau:

JOSEPH PAUL WEBER, ESQUIRE
 TERRENCE E. REIDELER, ESQUIRE
 1919 M Street, NW
 Washington, D.C. 20554

Hearing Began: 11:50 a.m. Hearing Ended: 2:37 p.m.

Recess Began: 12:00 p.m. Recess Ended: 2:30 p.m.

P R O C E E D I N G S

JUDGE STEINBERG: We're on the record now. Let me just give a little spiel about what this is all about. This is the date that was scheduled to commence the hearing in WT Docket No. 95-26, involving the question of whether Commercial Realty St. Pete, Inc., or CRSPI, and its principals James C. Hartley, Teresa Hartley and Ralph E. Howe should be barred from participating in future Commission auctions or from holding Commission licenses.

We met here -- I should say, we convened here -- it's now 10 to 12:00 and we convened here around 10:00 and I brought up the subject of the possibility of settling this proceeding. And for the last almost two hours we've been having in essence settlement discussions and we think we've reached an outline of a -- of the settlement of this case. And at this point I'd like to put the outline on the record, at least preserve it for the record, and this is subject to being both -- the counsel for the Wireless Telecommunications Bureau has to, has to get approval from, from their superiors before they can enter into the agreement and when we recess at this time they're going to go and see if they can, if they can do that. This is also subject to being put in the, in the formal language of an agreement of course, so the language that I'm using here might not necessary be put in the agreement. It's just I'm just trying to put the gist of it in

1 the record.

2 The first point is that Mr. Hartley, CRSPI -- when
3 I say Mr. Hartley I'm referring to CRSPI, Mr. Hartley and, and
4 Mrs. Hartley, and I'm just using that as a shorthand term.
5 Mr. Hartley will, will agree not to bid in future Commission
6 auctions or apply for any Commission authorizations for a
7 period of 10 years. However, he will, he will reserve the
8 right to petition for reconsideration of that 10-year
9 exclusion, and exclusion is my word, it hadn't come up, after
10 five years. And Mr. Hartley understands that the Commission
11 may grant the petition and allow him to apply or may deny the
12 petition. Is that correct, Mr. Hartley?

13 MR. HARTLEY: Yes, sir.

14 JUDGE STEINBERG: The second point is that
15 Mr. Hartley, in entering into an agreement, is not admitting
16 to any wrongdoing. The third point is that Hartley can pursue
17 all legal remedies available to him in connection with the 20
18 licenses that he won at the auction. And specifically what
19 we're talking about is the Commission issued a Memorandum,
20 Opinion and Order, FCC 95-367, released September 1, 1995, and
21 what we're talking about is basically pursuing that at the
22 Commission level and at the court level in the Court of
23 Appeals.

24 The fourth point is if Mr. Hartley or CRSPI lose
25 that lawsuit in the Court of Appeals, that they agree to pay

1 the default penalties as they are currently written in the
2 Commission rules.

3 The fifth point is that -- and again, this is again
4 is tied in with that Court of Appeals -- the prospective Court
5 of Appeals case, is that the Commission -- if Mr. Hartley
6 prevails in the Court of Appeals and the Commission has to
7 make a decision as to whether or not to grant his applications
8 for licenses for those 20 facilities, that the Commission may
9 raise the issue of the party's fitness at the time the license
10 applications are put on public notice. And you understand
11 that also, Mr. Hartley?

12 MR. HARTLEY: Yes, sir.

13 JUDGE STEINBERG: The sixth point is that
14 Mr. Hartley and CRSPI will not seek relief under the Equal
15 Access to Justice Act. The seventh point is that Mr. Hartley
16 and CRSPI will make a voluntary contribution to the United
17 States Treasury in the amount of \$10,000, \$3,000 to come from
18 Mr. Hartley, \$3,000 to come from Mrs. Hartley, \$4,000 to come
19 from CRSPI and that the total amount will be -- the \$10,000
20 will be amortized over a period of five years and the first
21 payment will be due, I think we said, 60 days after an order
22 terminating this proceeding becomes final.

23 The last point, the last point -- the eighth point
24 is that this settlement will have no effect on the notice of
25 apparent liability which is --

1 MR. COLBY: FCC --

2 JUDGE STEINBERG: Yeah, I'll get it. FCC 95-58,
3 released February 16th, 1995. Now let me ask Mr. Hartley,
4 does that -- does my summary accurately describe what you've
5 agreed to?

6 MR. HARTLEY: Yes, sir, everything except maybe just
7 to explain the last point, number 8.

8 JUDGE STEINBERG: Yeah.

9 MR. HARTLEY: That's a separate issue that we're
10 litigating at this point --

11 JUDGE STEINBERG: Well, litigating --

12 MR. HARTLEY: -- or is it the same issue --

13 MR. COLBY: No, no --

14 MR. HARTLEY: -- that we're here today for?

15 JUDGE STEINBERG: No, that's, no, that's totally
16 separate from this case. That's the -- yeah, that's the
17 notice of apparent liability which I have no jurisdiction
18 over.

19 MR. HARTLEY: And the litigation in that case, is it
20 basically the same litigation though as this case?

21 JUDGE STEINBERG: No.

22 MR. COLBY: That case --

23 MR. HARTLEY: Just asking.

24 MR. COLBY: -- that case would require a de novo
25 trial in the United States District Court in Florida. That

1 case cannot be resolved either by an appeal to the Court of
2 Appeals or by litigation of the Commission. If the Commission
3 affirms the notice of liability which we've contested, the
4 Commission would then have to bring an action against CRSPI,
5 the corporation, in the United States District Court either
6 here or in Florida. It would be a de novo trial. That means
7 new, from the beginning, all over again.

8 MR. HARTLEY: So, that may or may not occur?

9 JUDGE STEINBERG: Right.

10 MR. HARTLEY: It may or may not occur no matter what
11 happens here?

12 MR. COLBY: That's right.

13 JUDGE STEINBERG: Right, that's, that's independent
14 of this but I think it belongs in the settlement agreement to
15 clarify that. Mr. Colby, did I accurately summarize --

16 MR. COLBY: Yes, you did, Your Honor. I just wanted
17 to explain to my client so I'd be sure he understood about the
18 notice of liability.

19 JUDGE STEINBERG: Mr. Weber?

20 MR. WEBER: Yes, Your Honor, you did.

21 JUDGE STEINBERG: Now what we're going to do now is
22 Mr. Weber and Mr. Reideler will -- are going to -- after lunch
23 I presume going to go and -- see, they're -- let me explain to
24 Mr. Hartley. They're in a different position from you.
25 You -- they represent -- their client is the Chief of the

1 Wireless Telecommunications Bureau and they basically have to
2 get approval of this from their superiors, and they're going
3 to go over there and try to do that now. And I just also --
4 for the record, I have offered if, if Mr. Colby -- Mr. Colby,
5 you have no objection I think you stated, that if, if their
6 superiors want to call me and question me about what went on
7 here and about my, my feelings and my beliefs that, that they
8 can do that. Is that correct, Mr. Colby?

9 MR. COLBY: I think that would be very helpful, Your
10 Honor.

11 JUDGE STEINBERG: And I assure you that whatever --
12 that, that not one word will be mentioned. I mean, I hope
13 this case does not have to go to hearing, but I can promise
14 you that not one word will be mentioned, not one word will be
15 mentioned by me over the phone about, about the merits of the
16 current litigation because I don't think that's proper. Their
17 superiors can call me about the terms of the settlement and
18 what I think about it.

19 The final thing is we've agreed to meet back here at
20 2:30 this afternoon. Hopefully, this settlement will be okay
21 with the Bureau. If it's not okay with the Bureau then what
22 we'll do is we'll start the hearing and we'll take the
23 testimony of Dean Tyler and we'll do that today and then
24 tomorrow morning we'll take the testimony of, is it Moore,
25 Pedersen and Keese?

1 MR. WEBER: Yes.

2 JUDGE STEINBERG: And then --

3 MR. WEBER: As well as Mr. Pedersen.

4 JUDGE STEINBERG: Yeah, Moore, Pedersen and Keesee.

5 We'll do that tomorrow. And then tomorrow we'll discuss
6 setting new dates for the rest of the hearing, because we
7 have, we have to reschedule a lot of witnesses and the four
8 witnesses that I've mentioned are, are out of town and there's
9 no sense in having them fly back here twice. Is there
10 anything that anybody wants to add? Hearing nothing --

11 MR. WEBER: Just thank you very much.

12 JUDGE STEINBERG: Thank you, and we'll be, we'll be
13 in recess until 2:30.

14 (Whereupon, off the record at 12:00 p.m.)

15 (Whereupon, on the record at 2:30 p.m.)

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A F T E R N O O N S E S S I O N

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2 JUDGE STEINBERG: We're back on the record, and let
3 me turn the floor over to Mr. Weber and he can tell us where
4 we -- you know, where we are.

5 MR. WEBER: We have spoken to people in the Bureau.
6 Right now the Bureau Chief is currently unavailable as she is
7 out of the country and the Deputy Bureau Chief is not in the
8 office today. However, discussions were had with him through
9 his cellular telephone and he has requested a continuance
10 until tomorrow morning, at least by 9:30 a.m., in order for us
11 to be able to discuss further within the Bureau the
12 ramifications of this settlement.

13 JUDGE STEINBERG: Mr. Colby?

14 MR. COLBY: I have nothing to add.

15 JUDGE STEINBERG: Why don't we -- we'll reconvene
16 tomorrow morning at 9:30 a.m., where hopefully we'll get
17 something favorable. If, if we -- if something comes up and
18 you can't get approval for the settlement then we'll start
19 with the first witness, you know, as soon after 9:30 as we
20 can.

21 Let me again -- I want to commend Bureau counsel and
22 Mr. Colby and Mr. Hartley for your efforts at, at let's say
23 settling this case. I mean, you know, I -- there's a lot of
24 give and take in these things and I, and I just -- and I know
25 nobody's entirely happy which is probably good and I just want

1 to, you know, thank you and, and commend you for, for your
2 efforts at, at getting this far and let's just keep our
3 fingers crossed that we can go all the way with this.

4 There was something else I wanted to add. That's
5 when I gave my little spiel on the record this morning I
6 forgot to note that the appearances of counsel were the same
7 as they had been throughout the case. Mr. Colby for CRSPI and
8 for Mr. Hartley and Mrs. Hartley, we've got Terrence Reideler
9 for the Bureau and Joseph Paul Weber and we have no appearance
10 by Mr. Howe, so let the record reflect that.

11 So, we'll be in recess until 9:30 tomorrow morning,
12 and I should also say that if Mr. Vaughan wants to talk with
13 me about, about this and if he needs any explanation from me,
14 you know, I'll make myself available and I'll be -- you know,
15 I'll be in the office. Usually I'm there between 7:30 and
16 8:00, depending on what time I roll out of the house.

17 MR. REIDELER: How about today, Judge? Are you
18 going to be there?

19 JUDGE STEINBERG: Pardon me?

20 MR. REIDELER: Are you going to be there today?

21 JUDGE STEINBERG: Yeah, today I'll be here 4:00,
22 4:10, 4:15. I got to take -- well, we don't have to this on
23 the record, but I'll be -- you know, I'll be here then. And I
24 -- if you want me to stay later I'm willing to stay later. I
25 don't care.

1 MR. REIDELER: Well, just in case that --

2 JUDGE STEINBERG: Yeah, okay. Yeah, you know, about
3 4:10, 4:15.

4 MR. REIDELER: Okay.

5 JUDGE STEINBERG: So then I have to leave at that
6 time and catch, catch the subway to catch the bus. Because if
7 I leave at 4:17 then I miss the --

8 (Whereupon, matter adjourned at 2:37 p.m. on
9 September 12, 1995.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

Commercial Realty

Name

WT 95-26

Docket No.

Washington, DC

Place

September 12, 1995

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 32 through 42, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara Lord in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

9/12/95

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